



[4915-01-P]

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 34554 (Sub-No. 16)]

Union Pacific Railroad Company–Temporary Trackage Rights Exemption–BNSF

Railway Company

Pursuant to a modified written temporary trackage rights agreement dated August 10, 2012, BNSF Railway Company (BNSF) has agreed to extend the December 18, 2011 expiration date of the local trackage rights granted to Union Pacific Railroad Company (UP)¹ over BNSF's line of railroad extending between BNSF mileposts 579.3 near Mill Creek, Okla., and 631.1 near Joe Junction, Tex., a distance of approximately 51 miles.²

¹ UP submits that the trackage rights being granted here are only temporary rights but, because they are “local” rather than “overhead” rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See R.R. Consolidation Procedures, 6 S.T.B. 910 (2003). Therefore, UP concurrently has filed a petition for partial revocation of this exemption in Union Pacific Railroad Company–Temporary Trackage Rights Exemption–BNSF Railway Company, Docket No. FD 34554 (Sub-No. 17), wherein UP requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 31, 2012, as provided in the parties' agreement. That petition will be addressed by the Board in a separate decision.

² The trackage rights were originally granted in Union Pacific Railroad Company–Temporary Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, FD 34554 (STB served Oct. 7, 2004). Subsequently, the parties

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The transaction is scheduled to be consummated on or after September 15, 2012, the effective date of the exemption (30 days after the exemption is filed).

The purpose of this transaction is to modify the temporary trackage rights exempted in Docket No. FD 34554 (Sub-No. 14) to further extend the expiration date to on or about December 31, 2012. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

(. . . continued)

filed notices of exemption several times based on their agreements to extend expiration dates of the same trackage rights. See FD 34554 (Sub-No. 2) (STB served Feb. 11, 2005); FD 34554 (Sub-No. 4) (STB served Mar. 3, 2006); FD 34554 (Sub-No. 6) (STB served Jan. 12, 2007); FD 34554 (Sub-No. 8) (STB served Jan. 4, 2008); FD 34554 (Sub-No. 10) (STB served Jan. 8, 2009); FD 34554 (Sub-No. 12) (STB served Dec. 31, 2009); and FD 34554 (Sub-No. 14) (STB served Feb. 11, 2011). Because the original and subsequent trackage rights notices were filed under the class exemption at 49 CFR 1180.2(d)(7), under which trackage rights normally remain effective indefinitely, in each instance the Board granted partial revocation of the class exemption to permit the authorized trackage rights to expire. See FD 34554 (Sub-No. 1) (STB served Nov. 24, 2004); FD 34554 (Sub-No. 3) (STB served Mar. 25, 2005); FD 34554 (Sub-No. 5) (STB served Mar. 23, 2006); FD 34554 (Sub-No. 7) (STB served Mar. 13, 2007); FD 34554 (Sub-No. 9) (STB served Mar. 20, 2008); FD 34554 (Sub-No. 11) (STB served Mar. 11, 2009); FD 34554 (Sub-No. 13) (STB served Mar. 15, 2010); and FD 34554 (Sub-No. 15) (STB served Apr. 15, 2011). At the time of the extension authorized in Docket No. FD 34554 (Sub-No. 14), the parties anticipated that the authority to allow the rights to expire would be exercised by December 18, 2011. However, the parties filed on August 16, 2012, in Docket No. FD 34554 (Sub-No. 16) their most recent notice of exemption to allow the trackage rights to be extended to on or about December 31, 2012, which we are addressing here.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by September 7, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 34554 (Sub-No. 16), must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Elisa B. Davies, General Attorney, Union Pacific Railroad Company, 1400 Douglas Street, Mail Stop 1580, Omaha, NE 68179.

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Decided: August 27, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner

Clearance Clerk

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